

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DTV Build-Out)	FCC 07-90
)	
Requests for Waiver of July 1, 2005 and)	
July 1, 2006 "Use or Lose" Deadlines)	
)	
Requests for Waiver of the August 4, 2005)	
"Checklist" Deadline)	

To: The Commission

Petition for Reconsideration

Siete Grande Television, Inc. ("Siete Grande"), licensee of Station WSTE-TV and permittee of Station WSTE-DT, Ponce, Puerto Rico, by its attorneys, pursuant to Section 1.106 of the Commission's Rules, respectfully requests partial reconsideration of the Commission's Order, released May 18, 2007, in the above captioned proceeding. The Order fails to address the unique aspects of WSTE(TV)'s current island-wide operation and WSTE-DT's corresponding use or lose deadline waiver request. The Order consequently jeopardizes the continuation of over-the-air television service to more than 2.5 million residents of Puerto Rico. In support hereof, Siete Grande states as follows:

1. Siete Grande operates a unique permanently authorized analog broadcast facility on Channel 7 that serves the entire island of Puerto Rico through a network of high-powered boosters rather than from a traditional main transmitter site. In order to maintain its island-wide coverage after the DTV transition, Siete Grande will need to convert its network of boosters to

digital operation and ensure that the Commission continues to protect the station from interference on an island-wide basis. To accomplish this, Siete Grande filed its request for a waiver of the "use or lose" deadline for WSTE-DT, Ponce, Puerto Rico, on July 1, 2006 (the "WSTE Waiver Request"). Rather than repeat the compelling and unique reasons that require a further extension of WSTE-DT's interference protection deadline, a copy of the WSTE Waiver Request is annexed hereto as Attachment A and is incorporated herein by reference.

2. At the time the WSTE Waiver Request was filed and on the date the Order was released, construction of WSTE-DT's interim DTV facilities on Channel 8 was still underway. WSTE-DT has since completed construction of its interim DTV facility on Channel 8 and WSTE-DT is currently on the air pursuant to automatic program test authority.¹ Siete Grande has been assigned Channel 7 as its permanent DTV channel. Channel 7 is currently WSTE-TV's analog channel. Siete Grande's plan is to move from its temporary DTV facility on Channel 8 to permanent island-wide DTV facilities on Channel 7 at the end of the DTV transition, thereby maintaining the station's current island-wide service after the DTV transition.

3. While temporary DTV operation on Channel 8 provides coverage to WSTE-DT's community of license – Ponce, Puerto Rico – such coverage comes nowhere near replicating WSTE-TV's existing analog coverage area on Channel 7. Nor, under existing Commission rules, could such replication be achieved on Channel 8, as it would create impermissible interference to

¹ An Application for License covering the Channel 8 DTV permit was filed on June 15, 2007.

another station. As a result, WSTE-DT's Channel 8 coverage area is only 18% of that provided by WSTE-TV's analog Channel 7 facilities.

4. In repeated filings over the past decade, Siete Grande has consistently stated its goal to fully replicate through its permanent DTV operation the island-wide coverage of its analog facilities.² Limiting future DTV service to the interim Channel 8 DTV coverage area would cause over 2.5 million residents of Puerto Rico who currently receive WSTE-TV's analog service to lose that service at the conclusion of the DTV transition. Such a loss of service would be extremely harmful to the residents of Puerto Rico, and is entirely unnecessary. Interference protection for all of WSTE-TV's analog coverage area must be maintained on Channel 7 if WSTE-TV is to be able to replicate its current coverage with a Channel 7 digital signal at the conclusion of the DTV transition..

5. As explained in the WSTE-DT Waiver Request, the reasons for this coverage disparity flows from the combination of: (1) WSTE-TV's unique four site tower array that utilizes synchronously operated booster stations strategically placed throughout the island to achieve island-wide service, (2) the absence of permanent Distributed Transmission System rules for DTV, (3) the absence of any Commission rules covering DTV booster operations, and (4) the

² See, e.g., Siete Grande Television, Inc. Petition for Reconsideration of Sixth Notice of Rulemaking dated June 12, 1997, filed in Docket 87-268; Comments of Siete Grande Television, Inc. in Docket MB03-15R ("Second Periodic Review DTV Rulemaking Proceeding"); Comments of Siete Grande Television, filed in Docket MB05-312 (DTV Distributed Television Systems); Comments of Siete Grande Television, Inc., filed in Docket 87-268 ("Seventh Notice of Rulemaking").

limitations placed upon WSTE-DT's interim operations on Channel 8 by the need to protect a nearby Channel 9 station from interference. Absent the booster facilities deployed by WSTE-TV for its analog facilities, the mountainous terrain in Puerto Rico precludes WSTE from achieving island-wide DTV service.

6. This is much the same situation faced by WSTE-TV in 1986 when it developed its unique multisite synchronous transmission array to overcome these same obstacles to provide island-wide service. The Commission encouraged WSTE-TV to develop its then-experimental operation, which was permanently licensed by the FCC in 1992. Thereafter, in developing DTV operations, the Commission further encouraged Siete Grande to "implement future booster stations if desired," stating in specific response to Siete Grande's Comments on the Sixth Report and Order, "We believe that coverage enhancements through the use of secondary low power stations are best addressed through local engineering solutions rather than as part of the DTV allotment process."³ Ironically, it is this very DTV allotment process that now stands in the way of WSTE-TV deploying the local engineering solution suggested by the Commission, which is critical to meeting the Commission's stated objective of full replication of existing broadcast coverage.

7. Siete Grande's engineering studies demonstrate that boosters for its DTV operations located at its existing analog booster sites are both technically feasible and capable of

³ See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, FCC 98-24, released February 23, 1998, par. 355.

achieving full DTV replication of WSTE-TV's current island-wide coverage area. To repeat, full replication of the existing analog coverage area on WSTE-TV's permanent DTV channel is readily achievable from an engineering standpoint. By reason of Channel 7's current operations, such booster operations will neither create interference to, nor have any preclusionary impact upon, any other analog or DTV facility serving the island of Puerto Rico or elsewhere.

8. More than \$25 million was invested in the experiment first encouraged by the Commission that created a stable and reliable multisite array on analog Channel 7. Nearly \$2 million has been spent in getting WSTE-DT on the air on an interim basis on Channel 8. Unless Siete Grande is permitted to replicate the full coverage area of its existing analog station on its permanent DTV Channel 7, both investments could be lost, the Commission's stated policy goal of achieving full DTV replication of current analog service will not be realized, and most importantly from a public interest standpoint, some 2.5 million residents of Puerto Rico will be deprived of an existing over-the-air service that has served the entire island for over twenty years. This loss is further exacerbated by the less than 50% penetration of cable and satellite service on the island, which makes over-the-air coverage all the more vital.

9. Although full DTV replication of the analog service is technically achievable, the station has faced a Catch 22 which Siete Grande has sought to address in another ongoing Commission proceeding. Specifically, Siete Grande, for the reasons more particularly set forth in the WSTE Waiver Request, elected Channel 7 as its permanent DTV channel. Siete Grande made that election on Form 381 in November 2004. When filing, Siete Grande included an Addendum to Form 381 setting forth its ultimate DTV goal of fully replicating its existing analog coverage service, and noting that none of the choices offered on the 381 Form applied to the unique operating characteristics of WSTE. Siete Grande indicated that the interim DTV

construction permit for the single tower on Channel 8 could not possibly replicate the station's multisite analog coverage, and Siete Grande advised the Commission that booster site operations would ultimately be required. Nevertheless, and without considering the matters raised in the Addendum to WSTE-TV's Form 381 election, the Commission tentatively allotted the requested Channel 7 to Siete Grande in the Seventh Further Notice of Proposed Rulemaking (Docket 87-268) ("Seventh Rulemaking Proceeding"), but with operating parameters that effectively constrain permanent DTV operations to the very limited coverage area of the interim DTV Channel 8 construction permit. These parameters effectively preclude Siete Grande from deploying booster operations on its DTV channel, in turn precluding island-wide coverage and full replication of its existing analog service.

10. Siete Grande filed Comments in the Seventh Rulemaking Proceeding to correct this oversight and to foster the Commission's own stated goal of achieving full replication of existing analog coverage. What is sought in this proceeding is to maintain the status quo with regard to interference protection so that Siete Grande does not lose its interference protection rights pending final resolution of the allotment proceeding and the eventual buildout of booster facilities. Maintaining the status quo is the only way Siete Grande can preserve its existing service to millions of residents who otherwise stand to lose such service at the conclusion of the DTV transition.

11. It is for this reason that partial reconsideration of the "use or lose" Order in this proceeding is sought. The use or lose Order listed WSTE-DT on Appendix F and, along with a host of other stations, simply dismissed the WSTE waiver request without explanation. The Order did not, as it did with other stations, specifically address WSTE-DT's unique operating characteristics and concerns, or how those concerns are impacted by the impending use or lose

deadline. While the Order carried with it a further automatic extension of the use or lose deadline to the new deadline for Siete Grande to complete construction of WSTE-TV's interim facilities, such an extension is *a fortiori* inadequate for ensuring interference protection for WSTE-TV's island-wide DTV service. Because Siete Grande has not yet been authorized to establish a multisite DTV equivalent of its analog facilities, WSTE-TV's island-wide interference protection must continue or its ability to provide a permanent digital signal to the entire island at the conclusion of the DTV transition will be endangered.

12. Moreover, now that Siete Grande has completed construction of its interim DTV facilities, it is not clear that any further extensions of the use or lose deadline can even be requested, as no further requests for extension of the construction deadline are otherwise necessary. In addition, Siete Grande has no assurance that final resolution of the Seventh Rulemaking Proceeding will occur prior to the current use or lose deadline, which is thirty days after the effective date of the Third DTV Periodic Review.⁴

13. Without further Commission action to extend island-wide interference protection for WSTE-TV and to permit WSTE-TV to implement its "local engineering solution" of an island-wide multisite DTV transmitter array similar to its analog array, an enormous service loss to over 2.5 million people will occur, without any corresponding service gain by other stations. Permitting WSTE-TV's Channel 7 interference protection to continue can prevent such an


⁴ See Order, note 2.

egregious loss of service without having any negative preclusionary impact or causing any interference to other stations. The public interest can only be served by reconsidering the Order and extending the use or lose deadline for WSTE-DT to the end of the DTV transition.

14. Accordingly, it is respectfully requested that the Commission act to extend the deadline for WSTE-DT to comply with the use or lose Order to the later of February 17, 2009, or any further extension of the DTV transition period, an action the Commission has taken with respect to several other stations referenced in the Order whose needs and circumstances are no less compelling than those of Siete Grande.

Respectfully submitted,

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Exhibit A

June 29, 2006

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Docket No. 03-15
Statement in Support of a Request to Waive the
July 1, 2006 Replication/Maximization Interference Protection Deadline
On Behalf of Siete Grande Television, Inc.
In Regard to Station WSTE(TV), Ponce, Puerto Rico

Dear Ms. Dortch:

Siete Grande Television, Inc., in accordance with the FCC's Public Notice dated June 14, 2006 (DA 06-1255), respectfully requests a waiver of the FCC's replication/maximization interference protection deadline of July 1, 2006 for WSTE in Ponce, Puerto Rico. WSTE's analog channel is Channel 7. It holds a construction permit to build DTV facilities on its currently assigned DTV Channel 8 in Ponce. Construction of the DTV facilities is currently underway. The current construction permit deadline is September 1, 2005, but due to circumstances beyond Siete Grande's control, after a lengthy local permitting process, erection of the tower was pushed back several months, requiring Siete Grande to file an FCC 337 application (filed on August 18, 2005, amended December 2, 2005 and further amended on April 20, 2006) to request a further extension until August 31, 2006. The local permits have been obtained, the tower has been erected, the antenna equipment mounted, the transmitter purchased

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and ready for delivery and the transmitter building is under construction. A substantial investment has been made to complete construction. The extension application is pending.

By way of background, WSTE, first experimentally and then through a permanent license, has for about 20 years provided service within its authorized analog Channel 7 primary service contour, which encompasses the entire island of Puerto Rico, by the use of an auxiliary transmitter in concert with three strategically placed booster stations operating simultaneously, to overcome the devastating effects of Puerto Rico's mountainous terrain. WSTE has received a tentative DTV post-transition assignment of Channel 7.

The *Second DTV Periodic Review Report and Order* mandated that TV licensees operating outside the top-100 markets, such as Siete Grande, in order to retain interference protection within their replication areas, must serve, by the July 1, 2006 deadline, at least 80% of the number of viewers served by the 1997 facility on which their replication area was based or the station will lose interference protection for areas not served. Siete Grande has the will to comply with this requirement, but due to circumstances beyond its control, finds itself unable to do so for reasons explained herein and therefore requests a waiver of the July 1, 2006 deadline requirement. Such a waiver will serve the public interest in that it will preserve post transition existing service to nearly 3 million residents who currently receive analog service on WSTE-TV. Interruption of that service can only be avoided by prompt action on this request and permitting Siete Grande to file applications to flash cut DTV service on WSTE-TV's three booster stations at the end of the DTV transition.

The Commission's *Second Periodic Review* did not address WSTE-TV's unique system of an auxiliary transmitter and three boosters. WSTE's replication area is based on the predicted Grade B contour of WSTE-TV's transmitter. As the history of WSTE shows, the actual contour produced by a single transmitter cannot alone provide service to the entire island due to intervening mountainous terrain. The choices on DTV Replication Form 381 failed to address WSTE-TV's unique characteristics. However, WSTE-TV's stated intention, set forth in the Addendum to that form, made clear Siete Grande's goal to replicate 100% of its existing analog signal.

Currently Siete Grande holds a construction permit to operate on DTV Channel 8 in Ponce. Because Channel 8 must protect Channel 9, Channel 8 is not ideal for island-wide use, which is why Siete Grande selected Channel 7 for post-transition DTV broadcasting. The DTV Channel 8 facility in Ponce, like its analog Channel 7 counterpart, the WSTE auxiliary facility in Ponce, is terrain limited to serve only the community of license and the southern portion of the island, amounting to about 630,000 residents served, or 18% of those served currently by the existing four-element analog array.

Because of the terrain limitations, full DTV replication of the 1997 analog coverage area cannot be achieved without a local engineering solution such as the continued use of the three booster sites. Therein lies the problem; the Commission has not authorized digital boosters, and absent such authorization Siete Grande will be stymied in terms of achieving DTV signal replication. Simply put, the absence of final rules that will enable Siete Grande to adopt a

booster-like solution to meet its coverage needs rendered moot any possibility that the July 1, 2006 "use it or lose it" deadline could be met. Without a waiver of the July 1, 2006, use it or lose it deadline, and the concomitant protection of WSTE-TV's 1997 analog interference free coverage area, service to 82% of the population currently receiving WSTE-TV's service would be permanently lost.⁵

As stated, Siete Grande has developed a plan to ultimately establish co-channel digital booster operations at its existing analog booster sites and then to flash cut its booster stations to achieve full replication of its existing analog service. This is the most logical, workable and cost effective means for Siete Grande to achieve replication. Moreover, it has no adverse impact on any other licensee in Puerto Rico. Siete Grande has prepared and upon authorization by the Commission to do so will file applications and appropriate waiver requests to authorize WSTE to flash-cut the three booster stations, and to operate the DTV station in Ponce on Channel 7 at the end of the DTV transition. In 1997, Siete Grande embarked on what has become a nine-year quest to provide "local engineering solutions" to achieve full DTV replication of WSTE-TV's island-wide analog signal. Such replication is a principal goal of the Commission's DTV conversion program and can be achieved with an innovative DTV multisite system that parallels the analog system that has worked so effectively for the past 20 years.

History and Description of Siete Grande's Unique Analog System

Siete Grande's multiple transmission system array is the only one of its kind in use for analog television, either in Puerto Rico or on the mainland. This four-site system, consisting of

⁵ The Commission has pending a rulemaking proceeding that contemplates use of distributed transmission systems but has not yet adopted final rules regarding such operations. There is no certainty that final rules will be adopted and given the amount of investment necessary to establish DTV at the booster sites or at other DTS locations and the limited resources of Siete Grande, which has been documented to the Commission in other proceedings, the interim rules which the Commission has put in place do not provide an acceptable means for Siete Grande to build out its system at the present time. Given the cost factors, the slow pace of construction in Puerto Rico and Puerto Rico's cumbersome permitting processes, establishing an interim DTS System within the deadline period simply would not have been possible in any event.

an auxiliary main transmitter in Ponce and three strategically placed co-channel booster stations, has operated without interruption for nearly 20 years to provide a single synchronized island-wide signal on its assigned analog Channel 7. Through this innovative technology, WSTE-TV has successfully overcome Puerto Rico's well-documented mountainous terrain to provide ubiquitous service that is fully within WSTE-TV's predicted signal contour--a service which could not otherwise be achieved through standard operation of a single antenna system. WSTE-TV was awarded an experimental license in 1987 to operate this island-wide transmission system. In 1992 Siete Grande succeeded in obtaining a permanent license to operate in its present fashion. More than \$25 million has been expended in developing and implementing this unique transmission facility.

In 1985, Siete Grande's predecessor licensee sought authority to construct an experimental broadcast facility utilizing widely spaced transmitters with circularly polarized antennas at low elevations in front of mountain peaks, all operating simultaneously on the same frequency. The intent of the experimental operation was to enable Station WSTE-TV to bring an independent, local service to large areas of the island previously unable to receive WSTE-TV's signal because of terrain factors. The Commission, in authorizing experimental operation concluded that the experiment would provide information useful to an evaluation of methods of overcoming terrain obstructions, and would provide a viewable signal to areas within the Station's licensed signal contour previously unable to receive the signal by direct means. The multi-transmission system was specifically developed because Puerto Rico's intervening mountains and terrain barriers precluded the signal from the Station's main transmitter from reaching, or even approaching, most of the populated areas on the island of Puerto Rico which are within the Station's authorized coverage contour. WSTE-TV believed that a system of simultaneously transmitting co-channel transmitters could provide greater service to the inhabitants within the authorized footprint of the Station's license than would be possible from a single transmission site which would provide principal community coverage to Ponce, but be shielded by mountains from most of the rest of the island. The Commission authorized WSTE-TV to construct and test on an experimental basis this unique system -- a system that to this day in analog technologies has not been replicated in Puerto Rico, the mainland or elsewhere. Ponce Television Corporation, 1 FCC Rcd 1167 (1986), recon. denied 2 FCC Rcd 5878 (1987). See also Channel 7, Inc., 4 FCC Rcd 5258 (1989). The same terrain obstructions that impeded island-wide signal coverage from a single transmitter in 1985 apply with equal force to DTV transmission today.

WSTE-TV constructed and tested its multi-site analog facility on an experimental basis, investing tens of millions of dollars into a process that succeeded in establishing an independent island-wide signal—one of just four commercial television stations that cover the island of Puerto Rico. Significantly, the other stations do not cover the island from one transmitter either. Instead they have obtained satellite waivers or utilize affiliated stations to achieve broader coverage. On August 20, 1992, the Commission, after an exhaustive review of thousands of measurements, granted Siete Grande a permanent license to operate the multi-site facility including Siete Grande's request for waiver of the Commission's rules to enable the booster stations to operate with higher than the maximum power permitted for booster stations. The

coverage results of the experiment were impressive. See Siete Grande Television, Inc., 7 FCC Red 5299 (1992). In granting the license to operate this integrated multi-transmission facility, the Commission pointedly observed (Siete Grande, *supra*)

“We believe that the mountainous terrain of Puerto Rico supports use of alternative methods to extend broadcast television service to as many people as possible. *See also, Channel 7, Puerto Rico*, 58 FCC 2d 1148 at 1151 (1975). The combination of the island’s topography and its geographic isolation, places Puerto Rico in a highly unusual position. Its geography significantly obstructs local broadcast signals, and, because of its isolation, it does not receive any broadcast signals from off the island. Nevertheless, that isolation allows broadcasters, such as Siete Grande, the flexibility to utilize innovative means to improve actual coverage without risking co-channel or adjacent-channel interference to others.

“Based on the evidence presented, we find that grant of Siete Grande’s applications will serve the public interest. Analysis of the data submitted by Siete Grande in conjunction with the experiment confirms that the four transmitters greatly improve actual reception of channel 7 throughout the island, allowing improved service to approximately 1.3 million people. Grant of the applications will not extend the station’s coverage beyond the area which the applicant is already licensed to serve; indeed, grant of the applications will allow Siete Grande substantially to enhance its service to those whom it is already licensed to serve. In addition, operation of the facilities will cause no interference to any co-channel or adjacent-channel station, nor will it preclude the establishment of any new facility which was not already precluded by the currently authorized channel 7 facility.”

“...the combination of the island’s topography and its geographic isolation places Puerto Rico in a highly unusual position. The island’s topography significantly obstructs local broadcast signals, and limits the ability of television stations in San Juan to provide service to portions of the island for which service would ordinarily be received. Therefore, in order for San Juan stations to reach audiences in the outer portions of the island, they must rely on some type of ownership/overlap combination or alternative engineering solution[s].”

Achieving island-wide coverage through means of the multi-site transmission facility has enabled WSTE-TV to provide emergency information and coverage in times of national disasters and hurricanes that have unleashed nature's destructive forces upon the island. Over the years, the need for WSTE-TV's island wide facilities has been attested to by the Governor, the Commonwealth Resident Commissioner and Member of Congress, mayors of major cities including San Juan and the community of license, Ponce, and the Civil Defense Administration as television communication remains the most important and efficient vehicle for information distribution to population areas that are cut off from other forms of mass communication.⁶ The importance of WSTE-TV's coverage capability is heightened further in this precarious time of homeland security, terrorism and national defense, especially since an estimated 65% of the residents of the island rely on over-the-air television reception and do not subscribe to multichannel video service providers.

WSTE-TV'S Attempts to Achieve DTV Service Area Replication

The four multi-site transmission facilities broadcast as a single system on Channel 7 even though they operate from a separate auxiliary transmitter site in Ponce and three booster locations in San Juan, Mayaguez and Arecibo. This integrated system of synchronous co-channel signals has been operating successfully as a single unitary system on a stable continuing basis since 1986, and has neither caused nor received interference from any television facility during its two-decade period of operation. The booster facilities do not expand the Station's coverage area beyond its predicted Grade B contour. Rather, the boosters enable WSTE-TV to provide service to those areas within the Grade B contour that could not otherwise receive service from a single transmitter location alone. Most significantly, although the Commission licensed three of the transmitters as boosters, which as secondary stations would not be entitled to protection, in terms of the Station's analog facilities, full service protection was afforded to Channel 7 by reason of the surrounding water and the primary status of the Station's main transmitter license across the island. In short, the distributed transmission system delivering the analog signal—even though through boosters—had de facto primary status since it was fully protected within WSTE-TV's predicted contour across the island and was therefore not subject to displacement by higher classed primary stations.

⁶ See *Request for Immediate Action*, filed by Siete Grande Television, Inc., dated February 21, 1992, on File No. BPCT-900531KE and *Reply Comments* of Siete Grande Television, Inc., dated January 24, 2003 in DA 02-3383.

In the FCC's *Sixth Report and Order*, Siete Grande was assigned a single DTV channel allotment on Channel 66 at its main transmitter site in Ponce. Siete Grande petitioned the Commission to partially reconsider the *Sixth Report and Order* by taking into account digital service area replication in the context of WSTE-TV's unique licensed facilities including its auxiliary main and three booster stations. Siete Grande observed that obtaining and building out the experimental and permanent authorizations required a multi-million dollar investment risk. The costs included engineering and permits, construction of towers, purchase of transmitters and the construction of an intricate microwave system to connect the various boosters. Not only will the investment encouraged by the Commission be lost if DTV signal replication of the analog contour is not achieved, but from a public interest standpoint, some 2.9 million of Puerto Rico's inhabitants would lose current over-the-air reception of Channel 7.

In its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24, released February 23, 1998 ("Reconsideration Order"), the Commission recognized that "the mountainous terrain characteristics of ... Puerto Rico does provide some terrain shielding of television signals." The Commission added "...we believe that these terrain characteristics should permit broadcasters such as SGI [Siete Grande] to implement future booster stations if desired. We believe that coverage enhancements through the use of secondary low power stations are best addressed through local engineering solutions rather than as part of the DTV allotment process."⁷

In 1999, Siete Grande filed an application for DTV authorization, requesting a waiver to establish synchronous DTV facilities at its booster sites in order to replicate its existing analog signal and preserve its independent island-wide service.

In February, 2002, Siete Grande filed an application for a single unitary license to cover all of its multi-site facilities. Such license would have conferred primary station status upon the booster sites by looking beyond the component parts of the signal and treating the entire integrated synchronous co-channel operation as one single array. The public interest benefits of being able to perpetuate this island-wide coverage have been attested to by numerous public officials. (See par. 8, *supra*.) Moreover, Siete Grande submitted a detailed preclusion study which demonstrated that its digital operation on Channel 7 would not preclude any core or out of core stations from finding frequencies of their own were the Commission to permit DTV

⁷ *Reconsideration Order* ¶ 355.

operation at Siete Grande's booster locations. The recent completion of the final round of permanent DTV channel elections confirms that fact.

On December 10, 2002, the Commission placed Siete Grande's unitary license application on a special public notice to solicit comments from interested parties as to the public interest ramifications of making such a grant. No party opposed the grant and no party in Puerto Rico commented upon the preclusion study or challenged its findings. Two parties, without opposing the merits of the Application, suggested that the Commission defer action on the proposal and instead conduct a rulemaking inquiry into the general benefits of unitary licenses. Shortly after the comment period expired, the Commission released its *Second Periodic Review*. On March 28, 2003, the Commission declined to address the issues raised by Siete Grande's unitary license application, reasoning that "These very issues are being explored by the Commission in a pending rulemaking proceeding." [and] "to do so could be seen as prejudging the rulemaking." See *Letter to Stuart Shorenstein*, dated March 28, 2003, DA 02-3383, p. 2.

Siete Grande then participated in the *Second Periodic Review DTV Rulemaking Proceeding* (MB 03-15), and the Commission, in its Order, pointed to DTS technologies as a solution for stations such as WSTE-TV to achieve DTV coverage replication. In 2005, the Commission initiated its Rulemaking Inquiry into the use of distributed transmission technologies (MB Docket No. 05-312) which contemplates the use of systems similar to the one proposed in the instant applications. That rulemaking proceeding is still pending and does not directly embrace WSTE-TV's contemplated use of DTV booster stations that mirror its current array. WSTE-TV's engineering studies show that the very same booster technology that overcame the mountainous terrain in WSTE-TV's analog service is readily adaptable to its proposed DTV operations. The proposed flash cut to DTV boosters will enable WSTE-TV to transition from island-wide analog to island-wide DTV service in an orderly and cost-efficient fashion, and achieve full replication of the 1997 analog coverage area by the time the cessation of analog TV service becomes mandatory. The herein-requested waiver of the July 1, 2006 replication deadline is supported by the public interest benefit of maintaining existing service to much of Puerto Rico's population without causing interference or preclusion. Siete Grande submits there is no other feasible or timely method that can be deployed which will achieve replication of its present analog signal on the island of Puerto Rico and avoid a substantial loss of service by the conclusion of the DTV transition.

Given the recent adoption of legislation establishing a firm DTV transition deadline in 2009, the high cost of building out DTV facilities, and the slow pace of the construction and permitting process in Puerto Rico, the completion of the DTS rulemaking proceeding or the development of new rules for DTV boosters will come too late to avoid service loss to 2.9 million inhabitants of an existing service. Tens of millions of dollars of investment will be erased. Moreover, WSTE-TV will be limited to serving only Ponce, which could compromise its future operations since every other Ponce licensed commercial TV station other than WSTE-TV operates pursuant to a satellite waiver.

Siete Grande currently holds a construction permit for DTV Channel 8 in Ponce and is in the process of establishing temporary DTV operations on that channel which will serve the

Station's community of license until island wide DTV operations can commence on Channel 7 in 2009. Siete Grande had initiated a rulemaking proceeding in 2004 to move to in core Channel 8 from out of core Channel 66 that had been originally assigned to Siete Grande and for which a construction permit was issued in 2003. Because Channel 8 must also protect Channel 9, interference limitations effectively made Channel 8 less than ideal for island-wide use. Hence, in the same week that Siete Grande was awarded Channel 8, WSTE-TV elected DTV Channel 7 as its permanent DTV channel in Puerto Rico.

The requested waiver is entirely consistent with the goals of the DTV transition. Indeed, it is unimaginable that after encouraging the use of local engineering solutions to overcome terrain obstruction, expending tens of millions of dollars to achieve an engineering marvel, and recognizing the public interest benefits that demonstrably flow from serving the entire island of Puerto Rico with a multi-site array capable of providing a unitary signal, that DTV island-wide service should now be forestalled or precluded because Siete Grande finds itself to be a square peg in a round hole. To be sure, DTV involves a different regulatory paradigm than analog, but every critical element of the DTV paradigm can be achieved by WSTE-TV in a manner that is workable and without technical harm to other licensees in order to achieve the goals of the full replication and maintenance of the Station's existing service.

Over the past decade Siete Grande has participated in one Commission proceeding after another and has been told that it must wait for yet another proceeding to be completed before it can replicate its existing service. Now that the transition deadline has been fixed and is fast approaching, a failure to waive the replication deadline will greatly jeopardize service for most of the island's inhabitants for an unknown period of time. Construction in Puerto Rico takes time and cannot be accomplished in time for the 2009 deadline unless action is timely taken so that Siete Grande can get underway with establishing its new DTV booster paradigm.

The waiver requested herein will serve the public interest by fulfilling the Commission's stated policy goals of achieving replication of the Station's 1997 analog service area and avoiding a service loss to almost three million residents of Puerto Rico, many of whom rely exclusively on off the air reception for television viewing. Accordingly, good cause exists for waiver of the use-or-lose deadline and the public interest would be served thereby.

Respectfully submitted,

/s/

Stuart A. Shoreinstein

cc: Shaun.Maher@fcc.gov